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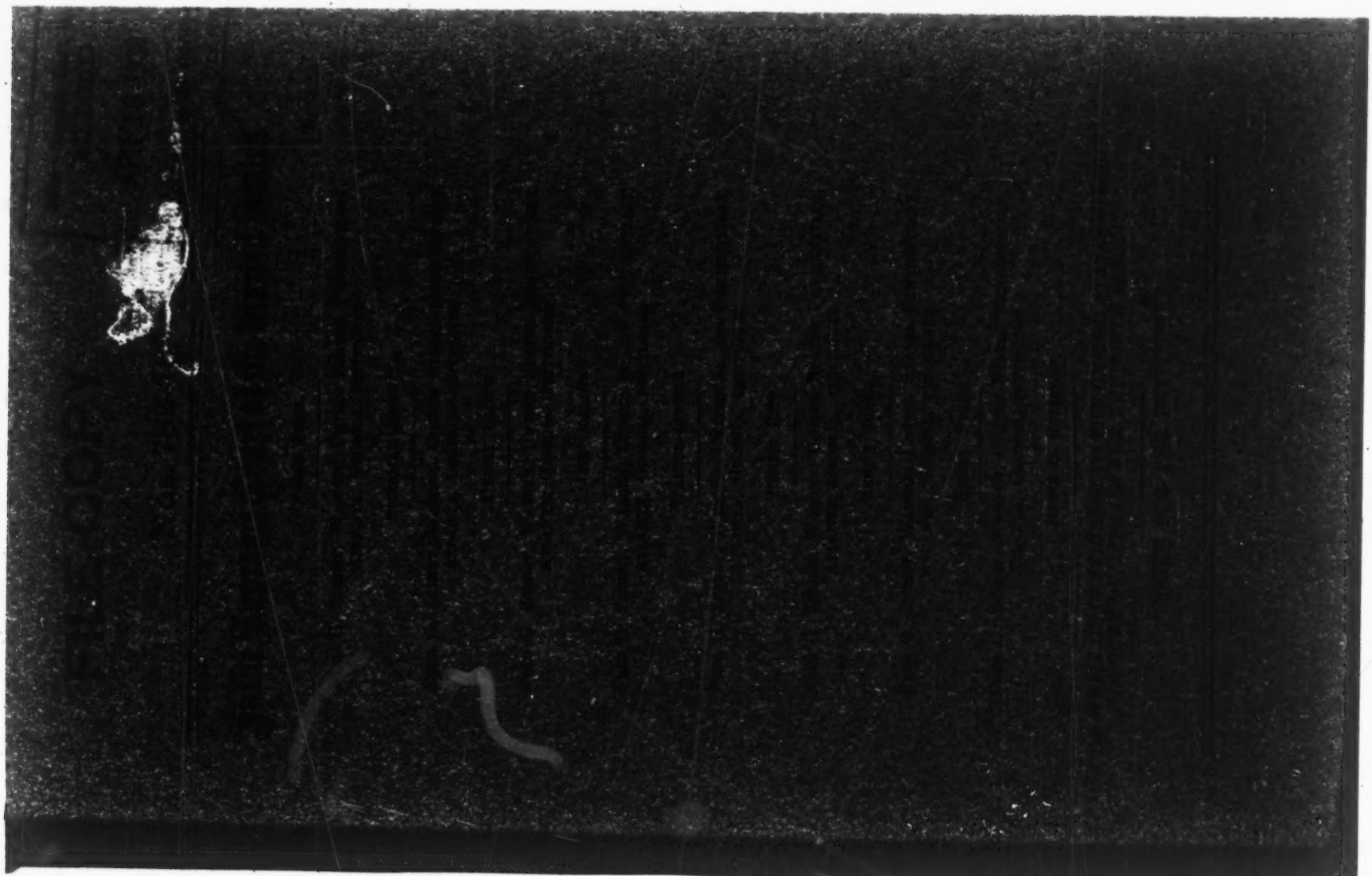

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 782

FRED G. ZERBST, WARDEN, UNITED STATES PENITENTIARY, ATLANTA, GEORGIA, PETITIONER

v.

SHERMAN KIDWELL

No. 783

FRED G. ZERBST, WARDEN, UNITED STATES PENITENTIARY, ATLANTA, GEORGIA, PETITIONER

v.

DEWEY SMITH

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FRED G. ZERBST, WARDEN, UNITED STATES PENITENTIARY, ATLANTA, GEORGIA, PETITIONER

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v.

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v.

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No. 789

FRED G. ZERBST, WARDEN, UNITED STATES PENITENTIARY, ATLANTA, GEORGIA, PETITIONER

v.

JEFFIE D. SULLIVAN

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the District Court in *Kidwell* v. *Zerbst* (R. 20–26) is reported in 19 F. Supp. 475. The orders of the District Court in the other cases sustaining the writs of habeas corpus adopted the opinion in the *Kidwell* case. (See, for example, *Smith* case, R. 15–16.) One opinion was rendered by the Circuit Court of Appeals covering all of the cases. It is reported in 92 F. (2d) 756.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered November 10, 1937. The petition for writs of certiorari was filed in this Court on February 10, 1938. It was granted March 28, 1938. The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a prisoner sentenced to a Federal penal institution for an offense committed while he was on parole from such an institution may be required by the Parole Board to serve the unexpired portion of his first sentence after the expiration of his second sentence.

STATUTES INVOLVED

The pertinent statutory provisions are set forth in Appendix A, *infra,* pp. 20–24.

STATEMENT

All of the above eight cases were argued and submitted together in the Circuit Court of Appeals and were decided by that court in one opinion. Although we believe that such differences of fact as exist in the cases are not of controlling importance, we have set forth in Appendix B, *infra,* pp. 25–32, a summary of the pertinent facts in each case. The material facts common to all of the cases were summarized by the Circuit Court of Appeals in its opinion as follows (see *Kidwell* case, R. 35–36):

> Appellees [respondents], while serving sentences in federal prisons, were released on parole or by reduction of their sentences for good conduct.[1] Before the maximum terms of their sentences had expired they committed federal offenses for which they were convicted and sentenced to imprisonment in the Atlanta penitentiary. The judgments were silent as to the time these second sentences were to begin. In each case, after the prisoner was incarcerated under the second sentence, a member of the Parole Board issued a warrant,[2] directed to

[1] Prisoners released with credit for good conduct are treated as on parole until the expiration of their maximum term. (See U. S. C., Title 18, Sec. 716 (b); Appendix A, *infra*, p. 24). Such prisoners, as the Circuit Court of Appeals stated, are consequently as much within the jurisdiction of the Parole Board as those who are granted paroles.

[2] While it is of no material difference, as no attempt was made to take the prisoners into custody under the warrants, it should be stated that in all of the cases, except the *Collins* and *Peel* cases, the warrants were apparently issued prior to incarceration on the second sentence.

any federal officer authorized to serve criminal processes within the United States, reciting that satisfactory evidence had been presented to him that (the person named) had violated the condition of his release, was deemed to be a fugitive from justice, and commanding that the warrant be executed by taking the prisoner, wherever found in the United States, and returning him safely to the institution hereinafter designated.[3] However, the warrant did not designate the institution.

The warrants were sent to the warden of the Atlanta penitentiary with a letter instructing him to place the warrant as a detainer and to take the prisoner named into custody on the warrant at the expiration of his present sentence. The letter further instructed that the case should be listed for a hearing on the violation charge only after (the person named) is in custody on the war-

[3] While the warrant in the *Kidwell* case recited that (R. 20) "satisfactory evidence having been presented to the undersigned Member of this Board that said paroled prisoner named in this warrant has violated the conditions of his parole, *the same is hereby revoked* and the said paroled prisoner is declared to be a fugitive from justice" [italics ours], the provision as to revocation is of no consequence. As is evident from U. S. C., Title 18, Secs. 719, 723a, 723b, and 723c (Appendix A, *infra*, pp. 22–24), parole may be revoked only by the Board and then only after the prisoner has been returned to prison under the warrant and after an opportunity for a hearing has been afforded him. The form of warrant used in the *Kidwell* case is an old form. That now utilized by the Parole Board omits any reference to a revocation of parole. (See *Owens* case, R. 17.)

rant. The warrants were served and appellees were detained as instructed. Appellees were released on habeas corpus after each had served more time in the penitentiary after his return thereto than the remainder of his first sentence,[4] without deducting any allowance for good conduct or the time he was at large on parole or conditional release before being returned to serve the second sentence.

Pending appeal by the Warden to the Circuit Court of Appeals for the Fifth Circuit, each of the respondents was released on bail. (See, for example, *Kidwell* case, R. 28.)

The Circuit Court of Appeals, one judge dissenting, affirmed the orders of the District Court sustaining the release of respondents on habeas corpus.

The majority reached the conclusion that in each case the first and second sentences ran concurrently from the day the prisoner was delivered to the Atlanta penitentiary on the second sentence; that the Parole Board was without authority to delay a hearing on the violation charge and to order that the first sentence be served consecutively. The majority decision was based primarily upon the general rule that where a person is confined in an

[4] Thus, in the *Jones* case (R. 9, 11) and in the *Sullivan* case (R. 7) the time remaining on the first sentence at the time of imprisonment on the second sentence was 132 days, while in the *Kidwell* case it was 395 days (R. 16) and in the *Collins* case 638 days (R. 9). It should also be noted that the release on habeas corpus in each case was after expiration of the time fixed in the second sentence.

institution under two separate sentences they run concurrently, in the absence of any direction to the contrary, and upon the provision of U. S. C., Title 18, Sec. 723c (Appendix A, *infra,* pp. 23–24), that "The unexpired term of imprisonment of any such prisoner [i. e., one for whom the Parole Board or any Member thereof has issued a warrant for his retaking] shall begin to run from the date he is returned to the institution." It held of no consequence the fact that the prisoner was returned to prison under the commitment on the new sentence and not upon the warrant of the Parole Board, the execution of which the Board had delayed until after the expiration of the new sentence, saying that: "The province of the warrants was to secure the return of the prisoners. Since they were already in custody, the issuance of the warrants was vain and useless. The warden held the prisoners under both sentences" (citing *Hill* v. *Wampler,* 298 U. S. 460, 465).

The majority also held of no consequence the facts that the Parole Board had not held a hearing as to parole violation after the prisoners had been returned to prison on the new sentences and that it had not revoked parole. It declared in effect that although the prisoner had not been returned to prison under the warrant but by virtue of the commitment on the new sentence, the Board was required under U. S. C., Title 18, Sec. 719 (Appendix, *infra,* p. 22), to grant the prisoner a hearing on parole violation at its first meeting after the pris-

oner was returned to custody and that while "thereafter the Parole Board may delay entering the order of revocation in its discretion, the time in which that may be done is limited by the unexpired term of imprisonment. After the prisoner had paid the full penalty of the law it was unnecessary to revoke his parole and the Board was without jurisdiction to do so."

The dissenting judge was of the opinion that the policy of the parole statute would not be carried out if the sentences ran concurrently, and that the conclusion reached by the majority would make impractical any real punishment for parole violations where such violations consist of Federal offenses. He was consequently of the opinion that "If the Board thinks a prisoner ought to serve the old sentence in full, as the Parole Act says he shall," the Parole Board had the discretionary authority to accomplish this by postponing service of the parole warrant and revocation proceedings until the new sentence had been served.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the Fifth Circuit erred:

1. In holding that where a prisoner has been returned to a Federal penal institution on a sentence for a new offense committed while on parole from such an institution, the unexpired portion of the original sentence is to be served concurrently with the new sentence, even though the prisoner was not returned to custody under the warrant of

the Parole Board and the Board has not held a hearing and revoked parole.

2. In not holding that where the Parole Board had issued its warrant for the retaking of a paroled prisoner during the period of his original sentence, it could postpone service of the warrant until after the expiration of the new sentence and thereafter hold a hearing on the charge of parole violation, revoke parole, and order service of the unexpired portion of the original sentence.

3. In affirming the judgments of the District Court sustaining the writs of habeas corpus and discharging the respondents from custody.

SUMMARY OF ARGUMENT

The majority decision below, in holding that the respondents have served both their second sentences and the unexpired portions of their first sentences, failed to recognize that under the parole law a parole violator does not begin to serve the remainder of his original sentence until he has been returned to prison by virtue of the warrant of the Parole Board. It is the reimprisonment of the parole violator pursuant to the Board's warrant that sets in motion the procedure which requires the Board to determine whether it will revoke parole.

The result of the majority decision is that parole violators who commit Federal offenses while on parole, for which they are reincarcerated in Federal institutions, will escape the punishment contemplated by the statute for parole violations. The

majority decision also deprives the Parole Board of the authority and jurisdiction vested in it by the parole law where the parole violations are Federal offenses. It is only by construing the parole law so as to permit the Parole Board to postpone the service of its warrant for the retaking of the parolee and the revocation of parole until after the expiration of the new sentence, as in the instant cases, that the power of the Parole Board may be upheld and the punishment contemplated by the statute made effective.

ARGUMENT

UNDER A PROPER CONSTRUCTION OF THE PAROLE LAW RESPONDENTS DID NOT SERVE THE UNEXPIRED PORTIONS OF THEIR ORIGINAL SENTENCES CONCURRENTLY WITH THEIR NEW SENTENCES

In holding that a parolee who commits an offense for which he is reimprisoned in a Federal institution serves the unexpired portion of his original sentence coterminously with the new sentence, the majority decision below makes impossible the punishment contemplated by the parole law for violation of parole. That statute clearly contemplates as punishment for a parole violation that the parolee shall be returned to prison and required to serve the time for which he was originally sentenced without diminution for the period he was on parole (U. S. C., Title 18, Secs. 719, 723c; Appendix A, *infra,* pp. 22, 23, 24).

Where the parole violation consists merely of a comparatively minor breach of a parole condition,

which does not constitute a crime, such as the failure to report to the parole adviser, going outside the parole limits without written permission, association with persons of bad reputation, etc., the punishment contemplated by the parole law for violation of parole can be fully accomplished through prompt action by the Parole Board.

Where, however, a new offense intervenes for which the parolee is reimprisoned, he obviously does not suffer the punishment contemplated by the statute in the event of a revocation of parole where he is permitted to serve any portion of the unexpired balance of his original sentence concurrently with ~~that prescribed by~~ his new sentence. Indeed, under the majority decision of the court below, if the new sentence is equal to or longer than the remainder of the old sentence, there would be no punishment at all suffered for the parole violation. It is only by postponing the service of its warrant for the retaking of the prisoner and the revocation of parole until after the expiration of the new sentence, as in the instant cases, that the Board may make effective the punishment which the statute contemplates.[5]

[5] It was for this reason that the Board no longer follows the practice which it pursued in *White* v. *Kwiatkowski*, 60 F. (2d) 264 (C. C. A. 10th). There the Board, during incarceration of the parolee in a Federal institution on a new sentence, revoked parole on the former sentence. It was held in view of the revocation of parole that both sentences were served concurrently.

The power of the Board to follow such procedure under the parole law cannot be questioned where the new offense results in incarceration in a state institution, and this is true although the new offense is a Federal one. It is well established in such cases that, if the parole warrant is issued during the period of the original sentence, the Parole Board may delay a retaking into custody on it and a revocation of parole until the parolee serves his term for the second offense. *Anderson* v. *Corall*, 263 U. S. 193; *Platek* v. *Aderhold*, 73 F. (2d) 173 (C. C. A. 5th) (second sentences for State offenses); *Stockton* v. *Massey*, 34 F. (2d) 96 (C. C. A. 4th), certiorari denied, 281 U. S. 723 (second sentence for Federal offense but to a local jail). See also *Biddle* v. *Asher*, 295 Fed. 670 (C. C. A. 8th). Unless the parole law is so construed as to permit the Parole Board to follow the same procedure where the violation of parole consists of a second offense for which the parolee is reimprisoned in a Federal institution, the punishment contemplated by the parole law cannot be meted out to such a parole violator. That the Parole Board is the only agency which can make effective such punishment is aptly pointed out by the dissenting judge in the following language (*Kidwell* case, R. 39–40):

> The judge can do nothing effectual about it. He cannot terminate the parole or order the arrest of the prisoner as a parole violator, for exclusive power to do all that is expressly vested by Section 3 of the Act of May 13,

> 1930, in the Board of Parole and its members. If he should direct the new sentences to take effect on the completion of the old, would he release the prisoner meanwhile? Could the prisoner thus be at large for years if the Board failed to act? Would it be right to leave the prisoner in this state of uncertainty? The judges here making the second sentences did what seemed to them their plain duty and their only function; they fixed a punishment for the new offenses and committed the prisoners for its service. The Parole Board, within its function of superintending the execution of the old sentences which had been interrupted by parole, thought parole had probably been violated, and if so the old sentences should be served in full as the parole statute expressly directs. This policy of the statute would not really be carried out by presently terminating the paroles and putting the old sentences into concurrent service with the new. It could only be done by postponing revocation of the paroles, indeed by postponing arrest and return to the penitentiary under the old sentences.

The necessary result of the decision of the majority below is that the only class of parole violators who do not suffer the punishment contemplated by the statute are those who commit Federal offenses while on parole for which they are reincarcerated in Federal institutions. This, we submit, results in an anomalous situation which is contrary to the manifest intent of the parole law.

Another result of the majority decision below is that in circumstances such as these it divests the Parole Board of the authority and jurisdiction vested in it by the parole law. The majority held in effect that such a violator is serving the unexpired portion of his original sentence even though the Parole Board has not revoked parole nor taken any effective steps looking toward such revocation. The parole law as a whole clearly discloses that the Parole Board has been vested with exclusive jurisdiction over matters of parole. It has sole authority to release prisoners on parole, impose such parole conditions as it may deem proper, issue warrants for the retaking of prisoners who have violated their parole, and to determine whether parole should be revoked or the terms and conditions thereof modified. (U. S. C., Title 18, Secs. 716, 719, 723b, 723c; Appendix A, *infra,* pp. 20, 22, 23.)

The fundamental error, we submit, in the decision of the majority of the court below is their failure to attach any significance to the fact that the respondents were returned to prison through the commitments on the new sentences and not pursuant to the warrants of the Parole Board. The majority said in effect that the only province of the warrants was to secure the return of the prisoners, and that since they were already in custody the issuance of warrants was vain and useless. This, however, ignores an essential significance of the warrant under the parole law. Under U. S. C., Title 18, Secs. 717, 723c (Appendix A, *infra,* pp.

22–23), any member of the Parole Board who has received reliable information that a prisoner has violated his parole may issue a warrant for his retaking. While the statute requires that this warrant be issued during the term of the parolee's sentence (Sec. 717), it does not specifically direct when it shall be executed. The statute merely says that "At the next meeting of the Board of Parole held at such prison after the issuing of a warrant for the retaking of any paroled prisoner the Board of Parole shall be notified thereof, and if said prisoner shall have been returned to said prison, he shall be given an opportunity to appear before the Board of Parole, and the Board may then, or at any time at its discretion, revoke the order [of parole] and terminate such parole or modify the terms and conditions thereof." (U. S. C., Title 18, Sec. 719; Appendix A, *infra,* p. 22.)

It is evident therefore that the parole warrant has another purpose than that of merely securing the return of the parolee to prison. Not until the execution of the warrant, i. e., the return of the parolee to prison *pursuant to the warrant,* is the Board required to hold a hearing and consider the matter of revocation of parole. Consequently, the execution of the warrant is the essential step which brings into operation the procedure for revocation which is outlined in the statute. In the instant cases the respondents cannot be considered as having served the unexpired portions of their old sen-

tences coterminously with their new sentences, inasmuch as the parole warrants had not been executed by the reimprisonment of the parolees pursuant to the warrants and parole had not been revoked by the Board.

Although the respondents in the instant cases were not reimprisoned pursuant to the parole warrants and although, in consequence, the Board was not required to determine whether their paroles should be revoked, the majority below has so misinterpreted another provision of the parole law (U. S. C., Title 18, Sec. 723c; Appendix A, *infra*, pp. 23–24) as to conclude that when the respondents were committed under their new sentences, they immediately began to serve the unexpired portions of their original sentences. The language upon which the majority below relies is that "The unexpired term of imprisonment of any such prisoner [i. e., one for whom the Parole Board or any member thereof has issued a warrant for his retaking] shall begin to run from the date he is returned to the institution." Comparison of this language, however, with other provisions of the statute (U. S. C., Title 18, Secs. 717, 719; Appendix A, *infra*, p. 22) clearly shows that this language refers only to a reimprisonment of the parole violator by virtue of the warrant of the Parole Board—the essential step in the procedure outlined in the parole law which requires the Parole Board to hold a hearing and determine whether parole should be revoked. Section 723c itself provides that the Board of

Parole, or any member, shall "have the exclusive authority to issue warrants for the retaking" of parole violators; Section 717 authorizes their issuance upon reliable information of parole violations; and Section 719 provides for a hearing after issuance of the warrant, retaking of the prisoner, and his return to prison. It is clear, therefore, that the language of Section 723c has no application to the respondents, who were returned to prison not by reason of any action by the Parole Board but solely by virtue of the commitments on the new sentences.

It was by reason of their misconception of the meaning of Section 723c that the majority below reached the conclusion that a parolee who is reimprisoned on a new sentence for an offense committed while on parole is required, under Section 719, to be given a hearing by the Board of Parole at its next meeting after the parolee has thus been returned to prison. However, as we have heretofore pointed out, the return to prison which fixes the time for the holding of that hearing is a return which has been accomplished pursuant to the warrant of the Parole Board and not a return which has occurred through a commitment under a new sentence. We do not contend that the Parole Board can arbitrarily withhold the granting of a hearing to a parolee beyond its first meeting after the parolee has been returned to prison pursuant to the Board's warrant. It is true that, under our construction of the statute, the parolee

whose violation consists of a new offense for which he is reimprisoned does not receive as prompt a hearing as does the parolee whose violation is not of that character. This, however, does not result in any prejudice to the former. His hearing obviously would be but formal in character since his commission of a second offense while on parole *ipso facto* constituted a breach of parole, a breach which, of course, he cannot dispute in the face of the record of his conviction. Even if it were possible for such a parolee to present extenuating circumstances to the Board, these circumstances would lose none of their value simply because the hearing is not held until the second sentence has been served.

In reaching its conclusion the majority below relied, in part, upon the rule that where one is confined in an institution under two separate sentences, they run concurrently, in the absence of any provision to the contrary. The application of this rule by the majority was based, it is evident, upon their assumption that the respondents began to serve the unexpired portions of their original sentences immediately upon their return to prison, even though they were returned by virtue of the commitments on the new sentences and not pursuant to the warrants of the Parole Board. As we have heretofore shown, that assumption is erroneous, and hence there is no basis for the application of the rule in the instant case.

Hill v. *Wampler,* 298 U. S. 460, cited in the majority decision, is clearly not in point. This case merely held that sentences must be served on the authority of the judgment and the sentence and not the commitment, if there is a variance between them. Reimprisonment of a parole violator was not involved.

CONCLUSION

For the reasons stated, we respectfully submit that the judments of the Circuit Court of Appeals should be reversed.

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APRIL, 1938.

APPENDIX A

The Pertinent Statutes

U. S. C., Title 18:

§ 714. Every prisoner who has been or may hereafter be convicted of any offense against the United States and is confined in execution of the judgment of such conviction in any United States penitentiary or prison, for a definite term or terms of over one year, or for the term of his natural life, whose record of conduct shows that he has observed the rules of such institution, and who, if sentenced for a definite term, has served one-third of the total of such term or terms for which he was sentenced, or, if sentenced for the term of his natural life, has served not less than fifteen years, may be released on parole as hereinafter provided. (June 25, 1910, c. 387, § 1, 36 Stat. 819; Jan. 23, 1913, c. 9, 37 Stat. 650.)

* * * * *

§ 716. Same; granting of parole; application; findings; terms and conditions; approval of Attorney General; parole of alien prisoners. If it shall appear to the Board of Parole from a report by the proper officers of such prison or upon application by a prisoner for release on parole, that there is a reasonable probability that such applicant will live and remain at liberty without violating the laws, and if in the opinion of the board such release is not incompatible with the welfare of society, then the Board of

Parole may in its discretion authorize the release of such applicant on parole, and he shall be allowed to go on parole outside of said prison, and, in the discretion of the board, to return to his home, upon such terms and conditions, including personal reports from such paroled person, as said Board of Parole shall prescribe, and to remain, while on parole, in the legal custody and under the control of the warden of such prison from which paroled, and until the expiration of the term or terms specified in his sentence, less such good time allowance as is or may hereafter be provided for by law; and the said board shall, in every parole, fix the limits of the residence of the person paroled, which limits may thereafter be changed in the discretion of the board. No release on parole shall become operative until the findings of the Board of Parole under the terms hereof shall have been approved by the Attorney General of the United States: *Provided,* That where a Federal prisoner is an alien and subject to deportation the Board of Parole may authorize the release of such prisoner after he shall have become eligible for parole on condition that he be deported and remain outside of the United States and all places subject to its jurisdiction, and upon such parole becoming effective said prisoner shall be delivered to the duly authorized immigration official for deportation. (June 25, 1910, c. 387, § 3, 36 Stat. 819; May 13, 1930, c. 255, § 1, 46 Stat. 272; Mar. 2, 1931, c. 371, 46 Stat. 1469.)

§ 716a. Same; continuance of parole until expiration of maximum sentence without deductions. Any prisoner sentenced after June 29, 1932, who may be paroled under authority of the parole laws, shall continue

on parole until the expiration of the maximum term or terms specified in his sentence without deduction of such allowance for good conduct as is or may hereafter be provided for by law. (June 29, 1932, c. 310, § 3, 47 Stat. 381.)

* * * * *

§ 717. Same; violation of parole; warrant for retaking prisoner. If the warden of the prison or penitentiary from which said prisoner was paroled or the Board of Parole or any member thereof shall have reliable information that the prisoner has violated his parole, then said warden, at any time within the term or terms of the prisoner's sentence, may issue his warrant to any officer hereinafter authorized to execute the same for the retaking of such prisoner. (June 25, 1910, c. 387, § 4, 36 Stat. 820; May 13, 1930, c. 255, § 1, 46 Stat. 272.)

* * * * *

§ 719. Same; action by board on issue of warrant; revocation of parole. At the next meeting of the Board of Parole held at such prison after the issuing of a warrant for the retaking of any paroled prisoner the Board of Parole shall be notified thereof, and if said prisoner shall have been returned to said prison, he shall be given an opportunity to appear before the Board of Parole, and the board may then, or at any time in its discretion, revoke the order and terminate such parole or modify the terms and conditions thereof. If such order of parole shall be revoked and the parole so terminated, the said prisoner shall serve the remainder of the sentence originally imposed, and the time the prisoner was out on parole shall not be taken into account to diminish the time for which he was sentenced. (June 25,

1910, c. 387, § 6, 36 Stat. 820; May 13, 1930, c. 255, § 1, 46 Stat. 272.)

* * * * *

§ 723a. Same; creation of single Board of Parole; membership; appointment; salary. In lieu of all boards of parole at Federal penal and correctional institutions existing on June 12, 1930, there is created as of that date a single Board of Parole to consist of three members to be appointed by the Attorney General, at a salary of $7,500 each per annum. (May 13, 1930, c. 255, § 1, 46 Stat. 272.)

§ 723b. Same; power, authority, and duties of Board of Parole; prisoners in State reformatories. All power and authority on June 12, 1930, vested in, and all duties on that date imposed upon, the Attorney General and the several boards of parole existing on that date with respect to the parole of United States prisoners are as of that date transferred to the Board of Parole created by section 723a of this title: *Provided, however,* That this section and sections 723a and 723c of this title shall not affect the method, terms, or conditions under which United States prisoners confined in any State reformatory are paroled, except that the power to approve the release on parole of such prisoners is conferred upon the Board of Parole created by section 723a of this title. (May 13, 1930, c. 255, § 2, 46 Stat. 272.)

§ 723c. Same; violation of parole; warrant for retaking prisoner; effect of violation on unexpired term of imprisonment. The Board of Parole created by section 723a of this title, or any member thereof, shall have the exclusive authority to issue warrants for the retaking of any United States prisoner who has violated his parole. The

unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to the institution, and the time the prisoner was on parole shall not diminish the time he was originally sentenced to serve. (May 13, 1930, c. 255, § 3, 46 Stat. 272.)

* * * * *

Conditional Release:

§ 716b. Same; prisoners released with credit for good conduct treated as on parole until expiration of maximum term. Any prisoner who shall have served the term or terms for which he shall after June 29, 1932, be sentenced, less deductions allowed therefrom for good conduct, shall upon release be treated as if released on parole, and shall be subject to all provisions of law relating to the parole of United States prisoners until the expiration of the maximum term or terms specified in his sentence: *Provided,* That this section shall not operate to prevent delivery of a prisoner to the authorities of any State otherwise entitled to his custody. (June 29, 1932, c. 310, § 4, 47 Stat. 381.)

APPENDIX B

PERTINENT FACTS IN EACH OF THE EIGHT CASES

Kidwell case, No. 782

Kidwell received a two year sentence in the District Court for the Eastern District of Kentucky on September 27, 1932 (R. 11), and was committed to the Federal Reformatory Camp at Petersburg, Virginia (R. 13), from which he was released on parole on August 27, 1933 (R. 16, 17). While out on parole, Kidwell, on or about May 17, 1934, committed another offense for which he was indicted in the same District Court (R. 5–6). He entered a plea of guilty (R. 6) and was sentenced to two years imprisonment on June 29, 1935, the sentence making no reference to his parole status on the former sentence (R. 7). Kidwell was first committed to the Reformatory at Chillicothe, Ohio, on the new sentence (R. 9) and was later transferred to the Atlanta Penitentiary (R. 16).

In the meantime, on June 18, 1934, while Kidwell was on parole from his original sentence he was declared a parole violator and a warrant was issued for him (R. 16). The warrant was sent to the warden at Atlanta and there placed as a detainer with instructions to the warden to take Kidwell into custody at the expiration of the new sentence, and to list him for a hearing on the charge of violating his parole only after he was in custody on the warrant (R. 19). On January 21, 1937, the new

sentence expired and on the next day the warrant was served on Kidwell at which time 395 days of the original sentence remained to be served (R. 16, 17).

On March 23, 1937, before any hearing was held on the violation charge, Kidwell applied for a writ of habeas corpus (R. 1–5) which was sustained (R. 20–26). Pending appeal, Kidwell was released on bail (R. 28).

Smith case, No. 783

Smith was originally sentenced on July 10, 1934, in the District Court for the Southern District of West Virginia, to two years imprisonment and was committed to the Atlanta Penitentiary (R. 7). On February 14, 1936, on the expiration of his minimum term, he was conditionally released (R. 12). While at large he committed another offense of which he was convicted in the Eastern District of Kentucky (R. 9). On May 27, 1936, he received a sentence of one year and one day and was committed to the Atlanta Penitentiary (R. 9–10). The second sentence contained no reference to his parole status on the former sentence (R. 9). On March 26, 1936, a parole warrant had been issued for the retaking of Smith as a conditional release violator under his first sentence (R. 7). This warrant was transmitted to the warden of the Atlanta Penitentiary with instructions to place it as a detainer and take Smith into custody on the warrant at the expiration of the second sentence (R. 13). On March 16, 1937, the second sentence expired and Smith was then taken into custody on the parole warrant to serve the remainder of his first sentence which amounted to 177 days (R. 12, 13).

Smith applied for a writ of habeas corpus (R. 1–5) which was sustained (R. 15). Pending appeal, he was released on bail (R. 17).

Collins case, No. 784

On November 17, 1932, Collins was convicted in the District Court for the Southern District of West Virginia and sentenced to three years imprisonment (R. 7). He was released on parole on February 16, 1934 (R. 7). While on parole he committed another offense and on September 18, 1935, he was again convicted in the same court, sentenced to serve one year and one day, and committed to Atlanta (R. 10). The second sentence was silent as to sequence of service (R. 7). A parole violator's warrant was issued October 3, 1935 (R. 11), and was sent to the warden at Atlanta accompanied by instructions to place the warrant as a detainer and take Collins into custody on the warrant at the expiration of his second sentence (R. 14). The new sentence expired on June 25, 1936 (R. 7). At that time Collins had 638 days to serve on his first sentence (R. 12). On September 21, 1936, his parole was revoked and he was ordered to serve the remainder of his original sentence (R. 12–13). Collins petitioned for a writ of habeas corpus (R. 1–5) which was sustained (R. 15–16). Pending appeal, he was released on bail (R. 18).

Owens case, No. 785

In the District Court for the Northern District of Alabama, on June 26, 1934, Owens was sentenced to serve a term of 15 months (R. 7–8). He was committed to the United States Penitentiary at

Atlanta on June 29, 1934 (R. 20). On April 27, 1935, Owens was released on parole (R. 12, 20). While on parole Owens committed another offense and on March 9, 1936, after pleading guilty in the same court, he was sentenced to imprisonment for a period of 15 months (R. 9–10). The second sentence made no reference to the parole status of Owens on the former sentence. Pursuant to the second sentence Owens was committed to Atlanta (R. 16).

On September 24, 1935, Owens was declared to be a parole violator and a warrant was issued for him (R. 17). The warrant was sent to the warden at Atlanta accompanied by a letter dated April 20, 1936, directing the Warden to place the warrant as a detainer and to take Owens into custody on the warrant at the expiration of his new sentence, and further stating that the case should be listed for a hearing on the violation charge only after Owens was in custody on the warrant (R. 19). On March 10, 1937, the second sentence expired (R. 12) and he was retained in custody as a parole violator to serve the remainder of his first sentence which amounted to 151 days if his parole was revoked (R. 12, 18). On April 14, 1937, Owens applied for a writ of habeas corpus (R. 1–5) which was sustained on May 13, 1937 (R. 21). Pending appeal, Owens was released on bail (R. 23).

Peel case, No. 786

Peel was sentenced by the District Court for the Eastern District of Kentucky to serve a sentence of two years (R. 7, 12). On April 18, 1935, he was released on parole from the Federal Reformatory

Camp at Petersburg, Virginia (R. 12). While on parole he committed another offense and on October 24, 1935, upon his plea of guilty in the same court, he was sentenced to two years imprisonment (R. 10), and was committed to the Atlanta Penitentiary (R. 11). On November 21, 1935, Peel was declared to be a parole violator and a warrant was issued for him (R. 12–13). The warrant was sent to the warden at Atlanta with instructions to place the warrant as a detainer and to take Peel into custody on it at the expiration of the second sentence (R. 7). The warden was further instructed that the case should be listed for a hearing on the violation charge only after Peel was in custody on the warrant (R. 7). On June 1, 1937, the second sentence expired and Peel was served with the parole warrant and held under it to await the action of the next meeting of the Board of Parole (R. 7–8). The record does not indicate the number of days of the original sentence which remained to be served. Peel filed a petition for writ of habeas corpus on June 1, 1937 (R. 2–5) which was sustained on June 5, 1937 (R. 14–15). Pending appeal, Peel was released on bail (R. 16–17).

Jones case, No. 787

In the District Court for the Northern District of Alabama, on May 25, 1934, Jones upon his plea of guilty was sentenced to 22 months imprisonment and was committed to the United States Industrial Reformatory at Chillicothe, Ohio (R. 10–11). On November 13, 1935, he was released conditionally (R. 9, 14). While at large Jones committed another offense and on April 9, 1936, upon his conviction

by a jury, he was sentenced by the same court to imprisonment for 18 months (R. 16) and pursuant to such sentence was committed to the penitentiary at Atlanta (R. 18). On March 17, 1936, Jones had been declared a parole violator and a warrant was issued for him (R. 14). The warrant was sent to the warden at Atlanta on May 28, 1936, with instructions to place it as a detainer and to take Jones into custody on the warrant after the expiration of his second sentence (R. 13). On June 22, 1937, Jones completed his second sentence, at which time the parole warrant was served on him and he was held in custody as a conditional release violator to complete service of the unexpired portion of his first term (R. 9, 15). 132 days remained to be served upon the first sentence (R. 9, 11). On June 18, 1937, Jones applied for a writ of habeas corpus (R. 1–5) which was sustained (R. 18–19). Pending appeal, he was released on bail (R. 21).

Stone case, No. 788

On June 3, 1935, upon his plea of guilty, Stone was sentenced by the District Court for the Middle District of Georgia to imprisonment for a year and a day and was committed to the Industrial Reformatory at Chillicothe, Ohio (R. 13–15). On December 3, 1935, he was released on parole (R. 11, 16). While on parole, on or about March 2, 1936, Stone committed another offense for which he was indicted in the same District Court (R. 7–9). He entered a plea of guilty (R. 9) and was sentenced to imprisonment for a year and a day (R. 10). He was committed to Atlanta on the new sentence (R. 17–18). On June 3, 1936, a parole violator's war-

rant was issued (R. 19) and the warrant was transmitted to the warden at Atlanta with directions to place it as a detainer and take Stone into custody at the expiration of the second sentence (R. 12). On May 12, 1937, the second sentence expired, the parole warrant was served on Stone and he was retained in custody to await action by the Board of Parole (R. 12, 16). At that time 183 days of the original sentence remained to be served (R. 16). On July 2, 1937, Stone applied for a writ of habeas corpus (R. 2–5) which was sustained (R. 21). Pending appeal Stone was released on bail.

Sullivan case, No. 789

On May 25, 1934, Sullivan was convicted in the Northern District of Alabama and sentenced to serve 22 months imprisonment (R. 5, 8). He was committed to the United States Reformatory at Chillicothe, Ohio (R. 5) and on November 13, 1935, he was released conditionally (R. 9, 12). While at large he committed another offense and on April 9, 1936, after conviction he was sentenced in the same court to imprisonment for 18 months and committed to the Atlanta Penitentiary (R. 12–14). On March 17, 1936, a parole violator's warrant was issued for him (R. 15–16). The warrant was transmitted to the warden at Atlanta on May 28, 1936, with instructions to place it as a detainer and to hold Sullivan as a conditional release violator after the expiration of the second sentence (R. 6). The second sentence expired June 22, 1937 (R. 16) at which time 132 days of the first sentence remained unserved (R. 6, 12). The parole warrant was served upon Sullivan, and he was held to await a

hearing before the Board of Parole (R. 7). A hearing was had on June 29, 1937, before one member of the Board who recommended that the conditional release be revoked (R. 7). On July 20, 1937, Sullivan applied for a writ of habeas corpus (R. 1–4) which was sustained (R. 17). Pending appeal Sullivan was released on bail (R. 19).

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